

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201110004**

Release Date: 3/11/2011

Index Number: 9100.00-00, 2642.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-128571-10

Date:

November 22, 2010

Re:

Legend:

Donor	=
Spouse	=
Trust 1	=
Trust 2	=
Trust 3	=
Trust 4	=
Trust 5	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Accountant	=
Year 1	=
Year 2	=

Dear :

This letter responds to the letter dated June 29, 2010, and subsequent correspondence, submitted by your authorized representative, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Donor's GST exemption and Spouse's GST exemption to transfers to Trusts 1 through 5.

The facts and representations submitted are summarized as follows:

On Dates 1 through 5, Donor and Spouse created five irrevocable trusts, Trust 1 through 5, each to benefit one of their children and that child's issue. On each date, Donor and Spouse transferred cash to the respective trust. Dates 1 through 5 are prior to December 31, 2000.

Donor and Spouse each filed a Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return to report all of their Year 1 gifts, including the Dates 1 through 5 transfers to the trusts. On the Forms 709, Donor and Spouse elected to treat the gifts made by them during Year 1 as made one-half by each spouse under § 2513. Accountant, who prepared the Year 1 Forms 709, failed to report the Dates 1 through 5 transfers to the trusts and to allocate Donor's GST exemption and Spouse's GST exemption to those transfers. In Year 2, Donor and Spouse each filed amended Forms 709, to report the Dates 1 through 5 transfers to Trusts 1 through 5 and allocate their respective GST exemption to the Dates 1 through 5 transfers to the trusts.

Donor and Spouse request an extension of time under § 2642(g) and § 301.9100-3 to allocate Donor's GST exemption and Spouse's GST exemption to the Dates 1 through 5 transfers to Trusts 1 through 5, and rulings that the allocations will be effective as of the dates of the transfers to the trusts and that the value of the amounts transferred to the trusts will be used in determining the amount of Donor's GST exemption and Spouse's GST exemption to be allocated to the trusts.

#### LAW AND ANALYSIS

Section 2513(a)(1) provides that, if the parties consent, a gift made by one spouse to any person other than his or her spouse is considered for purposes of the gift tax as made one-half by the donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a "transferor" to a "skip person." A "generation-skipping transfer" is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2631(a), as in effect for the year at issue, provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation, once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed. Section 26.2632-1(b)(4) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or

before the date prescribed by § 6075(b) for such transfer the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) and § 26.2652-1(a)(4) provides that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in

§ 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Under § 301.9100-3(b)(iv), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make the election.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Under § 2652(a)(2) and § 26.2652-1(a)(4), each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. Therefore, Donor and Spouse are granted an extension of time of 120 days from the date of this letter to allocate his and her respective GST exemptions to one-half of the entire value of the amounts transferred on Dates 1 through 5 to Trusts 1 through 5. The allocations will be effective as of the dates of the transfers to the trusts, and the value of the amounts transferred to the trusts will be used in determining the amount of Donor's GST exemption and Spouse's GST exemption to be allocated to the trusts. The allocations made on the amended Forms 709 in Year 2 are treated as ineffective as a result of the relief granted in this ruling.

The allocations should be made on supplemental Forms 709 for the appropriate calendar year and filed with the Internal Revenue Service, Cincinnati Service Center—Stop 82, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Forms 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we are not ruling on whether Trusts 1 through 5 will have zero inclusion ratios as a result of the allocation of Donor's GST exemption and Spouse's GST exemption to the Dates 1 through 5 transfers to the trusts. The

rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs and Special Industries)

By: \_\_\_\_\_  
Lorraine E. Gardner, Senior Counsel  
Branch 4  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: